

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE DESIGNATION )  
 OF ELIGIBLE TELECOMMUNICATIONS )  
 CARRIERS BY THE INDIANA UTILITY )  
 REGULATORY COMMISSION PURSUANT ) CAUSE NO. 41052 ETC 58  
 TO THE TELECOMMUNICATIONS ACT OF )  
 1996 AND RELATED FCC ORDERS AND IN ) APPROVED: APR 04 2012  
 PARTICULAR, THE APPLICATION OF )  
 TELRITE CORPORATION D/B/A LIFE )  
 WIRELESS TO BE SO DESIGNATED )

ORDER OF THE COMMISSION

**Presiding Officers:**

**Kari A.E. Bennett, Commissioner**

**Gregory R. Ellis, Administrative Law Judge**

On February 14, 2011, Telrite Corporation d/b/a Life Wireless (“Applicant” or “Telrite”) filed its Verified Application (“Application”) for Designation as an Eligible Telecommunications Carrier (“ETC”) with the Indiana Utility Regulatory Commission (“Commission”). In its Application, Telrite sought designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to § 214(e)(2) of the Federal Communications Act of 1934, as amended (“Act”) solely to provide prepaid wireless services supported by the Federal Universal Service Fund’s (“USF”) Lifeline program and Link Up program. Applicant did not seek authority to provide services supported by the USF’s high-cost program.

On March 1, 2011, CenturyTel of Central Indiana, d/b/a CenturyLink, CenturyTel of Odon, d/b/a CenturyLink, United Telephone Company of Indiana, Inc., d/b/a CenturyLink (collectively “CenturyLink”) filed a petition to intervene in this Cause for purposes of understanding Telrite’s intentions for its ETC designated service area. The Commission granted CenturyLink’s petition to intervene on March 16, 2011. On March 21, 2011, Applicant filed its Amendment to the Application eliminating from its Application a request for ETC designation in any area served only by CenturyLink. On June 7, 2011, Applicant pre-filed its direct testimony and exhibits. CenturyLink filed a motion to withdraw its intervention on June 24, 2011, which the Commission granted on June 28, 2011. The Indiana Office of Utility Consumer Counselor (“OUCC”) pre-filed the testimony of Senior Analyst Ronald Keen on August 11, 2011. Telrite pre-filed its rebuttal testimony and exhibits on August 24, 2011.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held in this Cause on September 12, 2011, at 11:00 a.m., in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Applicant and the OUCC

were present and participated. The testimony and exhibits of both Applicant and OUCC were admitted into the record without objection. No member of the general public appeared or sought to testify at the hearing.

On September 22, 2011, Nexus Communications, Inc. (“Nexus”) filed its Verified Petition of Nexus Communications, Inc. for Leave to File Amicus Brief (“Motion”) on the sole legal issue of the Federal Communications Commission’s (“FCC”) standards for carriers to utilize their own facilities in determining whether a carrier must seek forbearance from the FCC. Nexus asserts that it has an application similar to Telrite’s application pending before the Commission and that its application will not likely be decided until after an order has been issued in Telrite’s application. Therefore, Nexus requested leave to file an amicus brief on the legal issue it identified regarding ETC applications.<sup>1</sup>

The Commission, having examined all of the evidence of record, and being duly advised in the premises, now finds as follows:

1. **Commission Notice and Jurisdiction.** Due, legal, and timely notice of the hearing in this cause was given and published by the Commission as provided by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Act, 47 U.S.C. §§ 151 *et seq.*, and applicable FCC rules, including 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with the Commission orders of generic application in Cause Nos. 40785, 41052 and 42067. The Commission’s jurisdiction in this case is also based on Ind. Code § 8-1-2.6-13(d)(5). The Commission therefore has jurisdiction over Telrite and the subject matter of this Cause.

2. **Applicant’s Characteristics.** Telrite Corporation, d/b/a Life Wireless, is a corporation organized and existing under the laws of the State of Georgia. Its corporate offices are located in Covington, Georgia 30014. On June 29, 2005, the Commission issued to Telrite, in Cause No. 42859, a certificate of territorial authority (“CTA”) to provide local exchange telecommunication service to the public throughout the State of Indiana on a bundled resale basis. The Commission also granted Telrite’s application for a CTA to provide facilities-based competitive local exchange carrier and caller ID service in Indiana on November 21, 2006 in Cause No. 43126. Applicant is a communications service provider and intends to offer commercial mobile radio service (“CMRS”). Telrite submitted its amended Notice of Change in a Certificate of Territorial Authority form to the Commission on August 26, 2011 to add CMRS to its existing CTAs. Applicant is also a telecommunications carrier as defined by 47 U.S.C. § 153(44).

3. **Requirements for ETC Designation.** By our Order issued on November 5, 1997 in Cause No. 40785, this Commission adopted the FCC’s original eligibility

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<sup>1</sup> We note that Nexus did not seek to intervene in this proceeding even though it claimed to have an interest in the outcome. An evidentiary hearing was held in this matter and the record was closed prior to Nexus filing its Motion. Neither the Applicant nor the OUCC filed a response to Nexus’ Motion. In view of these circumstances, the Commission finds it unnecessary to address Nexus’ Motion.

requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal Universal Service support is required by 47 C.F.R. § 54.101(b) to offer the universal services or functionalities set out in 47 C.F.R. § 54.101(a)<sup>2</sup>. In addition to offering these universal services, to be eligible for designation as an ETC applicants are required by 47 C.F.R. §§ 54.405 and 54.411 to offer qualifying low-income customers the Lifeline and Link Up programs.<sup>3</sup> Telrite's Application seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's Low-Income programs as a prepaid wireless carrier. If the Application is approved, 47 C.F.R. § 54.405(b) will require Applicant as an ETC receiving federal universal support for Lifeline and Link Up to publicize the availability and cost of the services and the Lifeline program using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released new ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. *Federal-State Joint Board on Universal Service*, 20 F.C.C.R. 6371 ¶42-43 (March 17, 2005) ("2005 FCC ETC Order"). This Commission adopted the FCC's new eligibility guidelines in its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, this Commission issued the first "Lifeline only" ETC designation, to Virgin Mobile in Cause No. 41052 ETC 55 (the "Virgin Mobile ETC Order"). Subsequently, we granted Lifeline-only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54 (June 29, 2011), to i-Wireless, LLC in Cause No. 41052 ETC 56 (August 3, 2011) and to TerraCom, Inc. in Cause No. 41052 ETC 60 (January 25, 2012). In these Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

#### 4. Evidence Presented.

A. Applicant's Evidence. Applicant presented the testimony of Brian Lisle, President of Telrite Corporation. Applicant is a Georgia corporation with its principal offices located in Covington, Georgia. Mr. Lisle testified that Telrite was established as a competitive local exchange carrier and interexchange carrier on a wireline basis. Beginning in 2002 Telrite obtained a direct Mobile Virtual Network Operator ("MVNO") agreement with AT&T and has been a provider of wireless services. Mr. Lisle testified that Telrite is a facilities-based carrier, owning facilities in Georgia, and will provide prepaid wireless

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<sup>2</sup> At the commencement of this Cause and at the time the record was closed, 47 C.F.R. § 54.101(a) set out nine (9) universal services or functionalities that were required to be offered in order to be eligible for designation as an ETC. 47 C.F.R. § 54.101 has recently been revised. See 76 FR 73830, 73870, Nov. 29, 2011, revised this section, effective Dec. 29, 2011; 77 FR 1637, 1640, Jan. 11, 2012, revised paragraph (a), effective Jan. 11, 2012; 77 FR 12952, 12966, Mar. 2, 2012, revised paragraph (a), effective Apr. 2, 2012. However, because these revisions occurred after the record in this Cause was closed, we will apply the version of the rule that was in effect at the time the record was closed.

<sup>3</sup> 47 C.F.R. § 54.411 has been removed and Link Up for other than Tribal Lands eliminated. See 77 FR 12952, 12972, Mar. 2, 2012, removed this section, effective Apr. 1, 2012.

services to consumers through a combination of its own facilities and resale of services provided from underlying wireless providers. Telrite is not currently providing CMRS service to any residential or business customer in Indiana, but plans to initiate such additional service throughout its designated service area shortly after receiving the ETC designation it is seeking in this application. Mr. Lisle testified that Telrite requests ETC designation in Indiana for the limited purpose of participating in the USF Lifeline program as a prepaid wireless carrier. Mr. Lisle further testified that Telrite's request does not seek authority to provide services supported by the USF's high-cost program.

Mr. Lisle testified that Telrite's service is different from many other pre-paid wireless providers because Telrite does not require its customers to undergo a credit check or to enter into long-term service contracts. The vast majority of its customers do not exceed the 68 minutes of service per month included in its standard offering; Telrite's Lifeline customers use on average 41 minutes per month, with a majority of its customers spending \$0.00 per month and 2.5% to 3% purchasing additional minutes monthly.

Indiana is not the first jurisdiction in which Telrite has sought ETC designation. Mr. Lisle testified that Telrite has previously received ETC designation for the limited purpose of offering prepaid wireless Lifeline services, on a combined facilities/resale basis, in six states: Arkansas, Illinois, Maryland, Missouri, Louisiana and West Virginia. At the time Mr. Lisle filed his direct testimony on June 7, 2011, Telrite had ETC applications pending in nine other states in addition to Indiana: Georgia, Kansas, Michigan, Minnesota, Mississippi, New Jersey, Pennsylvania, Washington and Wisconsin. In his subsequently-filed rebuttal testimony, Mr. Lisle noted that Telrite had also received ETC designation for its wireless Lifeline services on a combined facilities/resale basis in Puerto Rico, and that its similar application in Georgia had been approved. Telrite's application for ETC status has not been denied in any jurisdiction.

In response to questions from the presiding officers, Telrite supplied a coverage area map to supplement its Amended Application, Exhibit B. Mr. Lisle testified that Telrite only intends to serve the ILEC service territory of AT&T. Telrite plans to offer wireless Lifeline service once it is designated as an ETC in Indiana. It also included an updated pricing schedule and revised terms and conditions.

Mr. Lisle testified that Telrite's Lifeline service plan includes all applicable taxes and fees within the free service plans. He also noted that Telrite currently pays E-911 fees for its wireline customers.

Mr. Lisle testified that Telrite will satisfy all of the requirements for ETC designation contained in both federal and Indiana state regulations. He noted that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities and that the FCC's Rules (47 C.F.R. § 54.201(i)) prohibit state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier's services. Mr. Lisle stated that Telrite meets this requirement because it provides service through a combination of its own facilities and through resale of other carriers' service. Specifically, Mr. Lisle testified that Telrite owns and operates a Class 4/5

switch and other facilities located in the State of Georgia which will provide enhanced call routing and control for calls going to Directory Assistance and/or Operator Service providers. Mr. Lisle testified that through these arrangements, Telrite is able to offer all of the services and functionalities supported by the universal service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service territory in the State of Indiana, as set forth in Telrite's Application.

Mr. Lisle testified that upon designation as an ETC in Indiana, Telrite will provide all of the services and functionalities required by FCC's rules and Commission regulations, including: voice grade access to the public switched telephone network, local usage capabilities, dual-tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange services, access to directory assistance services and access to toll limitation services.

*i. Voice-grade access to the public switched telephone network.*

Telrite's Application explains that voice grade access permits a telecommunications user to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal that there is an incoming call. The Application indicates Telrite's customers will be able to make and receive calls on the public switched telephone network with a minimum bandwidth of 300 to 3000 Hertz through interconnection agreements with local exchange carriers ("LECs") in Indiana. Telrite commits to responding to reasonable requests for service by providing service to a customer who has a billing address in the service area at the customer's billing address or at a different address specified by the customer that represents the customer's home or work location.

*ii. Local usage.* Telrite's Application explains that local usage is

an amount of minutes of use of exchange service provided without an additional charge to end users. Telrite notes that the FCC has specified that a local usage plan is acceptable if it is "comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation." *See* Federal-State Joint Ed on Universal Srv., Report and Order, 20 FCC Red 6371, at ¶ 32 (2005). Telrite states in the Application that its current local usage plans are comparable in value to those offered by incumbent local exchange carriers ("ILECs") operating in the requested Service Area and that Telrite's plans offer consumers numerous benefits, including larger "local" calling areas, the availability of mobile service, unlimited local and long-distance calling options, nationwide coverage and premium services including call waiting, three-way calling, and voicemail, among other services.

*iii. Dual-tone, multi-frequency ("DTMF") signaling or its functional equivalent.* In its Application, Telrite explains that DTMF, more commonly known as touch-tone, is a method of signaling that facilitates the transport of call set-up and detail information. Telrite's Application specifies that it currently uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling.

iv. Single-party service or its functional equivalent. Telrite's Application indicates that single-party service affords a user a dedicated message path for the length of a user's particular transmission. The Application asserts that Telrite will offer single-party service to all customers in its proposed Service Area.

v. Access to emergency services. The Application describes access to emergency service to include services, such as 911 and enhanced 911 ("E-911") that are provided by local governments or other public safety organizations. Telrite indicates that it currently provides wireline customers in Indiana with such access to emergency services, and is capable of delivering automatic numbering information ("ANI") and automatic location information ("ALI") over its existing network, and otherwise satisfies applicable state and federal E-911 requirements. The Application further asserts that Telrite will continue to work with local public safety answering points ("PSAPs") within its ETC service areas to make 911 and E-911 service available to its customers.

vi. Access to operator services. Telrite indicated in its Application that access to operator services means access to automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. Mr. Lisle testified that Telrite customers will have access to operator services, in accordance with the FCC's requirements. Telrite states it meets this requirement by providing access to operator services with respect to billing questions of customers by dialing 611 and access to operator services with respect to call completion of customers by dialing 411.

vii. Access to interexchange service. The Application indicates that with respect to wireless carriers access to interexchange service means access to the functional equivalent of the use of the loop, as well as that portion of the switch that is paid for by the end user, necessary to access an interexchange carrier's network. Telrite states that it meets this requirement by providing all of its subscribers with the ability to make and receive interexchange or toll calls through Telrite's network.

viii. Access to directory assistance. Telrite's Application indicates access to directory assistance means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. Telrite states it meets this requirement by providing access to directory assistance to customers by dialing 411. Telrite states that it has the capability to provide and support these calls.

ix. Toll limitation for qualifying low-income consumers. Telrite's Application describes toll limitation as allowing customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. Telrite states the nature of pre-paid service mitigates the need for toll control because Telrite's service is not distance-sensitive and there is no separate charge for local or domestic long distance calls and since service is prepaid, customers are not disconnected for failure to pay toll charges. Telrite states it will offer toll limitation to all Lifeline customers in its Service Area.

In response to the presiding officers' docket entry questions of September 14, 2011, Mr. Lisle provided a chart showing Telrite's proposed Lifeline service plans for Indiana. Telrite offers plans with 68 or 125 free minutes with rollover of unused minutes and 250 free minutes without rollover of unused minutes. Mr. Lisle testified that Telrite will use all low-income universal service support to allow the Applicant to provide the service with no monthly recurring charge, thus ensuring that the consumer receives 100% of all universal service support funding for which Telrite will seek reimbursement of USF Lifeline support necessary to provide the free minutes of airtime above. In the event that all airtime has been used, Lifeline Customers will have the ability to purchase additional time by the following methods:

1. by calling Telrite directly;
2. online at [www.lifewireless.com](http://www.lifewireless.com);
3. at any of Telrite's authorized retail locations; and
4. at MoneyGram locations.

Telrite makes the following recharge / refill plans available to all wireless customers regardless of Lifeline eligibility:

<u>Price</u>	<u>Number of Minutes</u>
\$10	101
\$25	252
\$7.95	3 days of unlimited talk and text
\$12.95	7 days of unlimited talk and text
\$21.49	14 days of unlimited talk and text
\$42.95	30 days of unlimited talk and text

Alternatively, Lifeline-eligible customers could elect to pay \$29.45 per month for an unlimited number of minutes.

Mr. Lisle noted that the Wireless Lifeline Plan will also include a free handset. Mr. Lisle stated that Telrite's standard customer terms and conditions in connection with its Lifeline service offering were attached to its Application. He noted that Telrite's Lifeline Plan also includes the following Custom Calling features:

1. Caller ID;
2. Call Waiting;
3. Call Forwarding;
4. 3-Way Calling; and
5. Voicemail.

Mr. Lisle testified that Telrite will use Link Up support to reduce Telrite's customary charge for commencing service by half, which will result in a reduction of Telrite's standard \$60.00 wireless activation charge by \$30.00. In addition, at the customer's request, there is no charge to update the customer's existing handset. The \$30.00 activation charge payable by low-income customers may be deferred over a twelve-month period, such that the activation

charge payable by Lifeline-eligible customers may be deferred over a twelve month period.

Mr. Lisle testified that Telrite has not applied for forbearance or ETC designation before the FCC, and as such, has received no conditions from the FCC related to ETC designation. However, Telrite is familiar with conditions imposed by the FCC on other carriers and is committed to compliance with such conditions if required in the State of Indiana.

Telrite states in the Application that its designation as an ETC is consistent with the public interest. Telrite noted that the FCC has identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest such as whether the benefits of an additional ETC would outweigh potential harms. These factors include: 1) the benefits of increased competitive choice; and 2) the unique advantages and disadvantages of the company's service offerings. Telrite contends that its ETC designation meets these criteria. The Application notes that designation of Telrite as an ETC on a wireless basis will incent other carriers serving the same area to improve their existing networks and service offerings in order to remain competitive, which will result in improved consumer services.

**B. OUCC's Evidence.** The OUCC presented direct testimony from its Senior Analyst, Ronald L. Keen. Mr. Keen presented a detailed analysis of the federal and state requirements regarding the designation of ETCs and explained how Telrite measured up to those requirements. After noting Indiana's "dismally low and embarrassing take rate" for Lifeline services, and that the unfortunate "loss of several wireless ETC Lifeline providers in Indiana" means that low-income Hoosiers currently have limited options for such services, Mr. Keen testified that approving Telrite's ETC application should help increase Lifeline penetration rates in the state.

Mr. Keen testified that his research revealed that Telrite is a Georgia Corporation located in Covington, Georgia. Mr. Keen stated that Telrite is not seeking state high cost support available to Indiana ETCs under Cause No. 42144. Mr. Keen testified that when the Indiana Low Income Assistance Program ("ILAP") goes into effect, Telrite will seek approval of an offering with the additional state discount, and projects that it will receive approximately \$300,000 per year from the ILAP.

Mr. Keen indicated that Telrite is a public utility under Ind. Code § 8-1-2-1 *et seq.* because it will resell prepaid wireless service in the same vein as TracFone. In his testimony, Mr. Keen characterized Telrite as a MVNO in terms of how it provides services to its customers. Mr. Keen testified that an MVNO is a company providing mobile phone services which has not obtained its own licensed frequency allocation of radio spectrum and usually does not possess some or all of the infrastructure required to provide mobile telephone service. The MVNO obtains service through a company possessing both the frequency allocation(s) and the required infrastructure to run an independent Mobile Network Operator ("MNO"). The MVNO role and relationship to the MNO will vary by market, the individual situations of the MNO and MVNO, etc. In general, the MVNO works independent of the

MNO, setting its own pricing structures subject to the rates agreed upon with the MNO. An MVNO is a Service Provider ("SP") that purchases wholesale mobile minutes and resells them to its end users. MVNOs generally do not have a dedicated Subscriber Identity Module ("SIM") cards. The services provided by the SP typically depend on the services of the host MNO or MVNO. Mr. Keen also affirmed that the OUCC does not believe that a MVNO can serve as a carrier of last resort ("COLR").

In his testimony, Mr. Keen discussed the OUCC's concern regarding the low Lifeline take rate in Indiana. Indiana's take rate has been low compared with other states for several years. While other states are improving their take rates, Indiana's remained low even in 2010, according to Universal Service Administrative Company's ("USAC's") latest statistics. Only Indiana and Hawaii had a take rate below 10% of the estimated eligible population of the state.

After describing his public-interest analysis consisting of eight different factors, Mr. Keen concluded that Telrite's ETC application should be granted, but conditioned upon Telrite filing for forbearance from the FCC requirement that a carrier receiving an ETC designation "provide services, at least in part, over its own facilities." He also recommended that this Commission impose the same requirements as found in a FCC forbearance order. Finally, Mr. Keen listed seven categories of information for Telrite to report annually to the Commission, plus seven additional requirements, including the payment of various fees. The seven categories of information to be reported annually to the Commission cover service outages, unfilled service requests, complaints, service quality, emergency functionality, local usage and equal access. The seven additional requirements prescribe the terms for Telrite to deactivate a Lifeline account for non-use; minimum usage and tariff requirements; filing its annual response to the USAC Lifeline verification survey; filing of quarterly reports on program participation; customer self-certification of Lifeline eligibility; annual confirmation by Lifeline customers of their continued eligibility; and payment of Indiana Telephone Relay Access Corporation ("InTRAC"), public utility, Indiana Universal Service Fund ("IUSF") and E-911 fees.

Mr. Keen testified there was little information regarding Telrite; however, he explained that Telrite is certified to provide telecommunications service in Indiana. Mr. Keen also testified that he had reviewed orders granting Telrite's ETC applications in six states as well as Telrite's pending ETC applications in nine additional states. Mr. Keen further testified that he examined Telrite's ETC designations applications in these other states and did not find any information that would stop the OUCC from supporting Telrite's ETC designation in Indiana. Mr. Keen also noted that the OUCC believes that Telrite can meet the nine mandated service requirements of 47 C.F.R. § 54.202(a).

**C. Telrite's Rebuttal Testimony.** Mr. Lisle testified that Telrite generally agreed with the OUCC's testimony with the exception of the suggestion that the Commission should make its grant of Telrite's ETC designation conditional upon Telrite seeking forbearance from the FCC's requirement concerning the provision of service over an ETC designated carrier's own facilities. Mr. Lisle testified that Telrite is distinct from Tracfone and Virgin Mobile in that Telrite provides service through a combination of its own

facilities and resale of wireless service from other carriers. Mr. Lisle indicated that Telrite owns and operates a Class 4/5 switch in Georgia and that the Telrite-owned facilities will be used to offer services, specifically directory assistance and operator services, in Indiana. Telrite submitted a confidential network facilities diagram in support of its case. Mr. Lisle also noted that none of the other jurisdictions in which Telrite has received approval as an ETC has imposed a similar condition and therefore, it should not be required to obtain forbearance in Indiana.

**5. Commission Discussion and Findings.** Universal Service funds are provided in four areas: (1) funds to support service to high cost areas; (2) provision of discounted telecommunications and internet access to eligible schools and libraries (also known as the “E-Rate” program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs; and (4) provision of discounted service to rural health care providers. *In the Matter of Comprehensive Review of Universal Service Management, Administration and Oversight*, 20 FCC Rcd 11307, ¶ 5 (2005). Telrite seeks ETC designation in Indiana for the limited purpose of offering Lifeline and Link Up service. Accordingly, Telrite’s application does not implicate the other three Universal Service fund programs. Based on the evidence in the record and the discussion below, we find that Applicant meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) and related FCC rules, and for the limited purpose of offering Lifeline service in Indiana, and satisfies the public interest analysis the Commission is required to perform under the 2005 FCC ETC Order. Applicant’s request for Link Up reimbursement is addressed in Section H. below.

**A. Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(10) as any person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Telrite is a “common carrier” for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

**B. Services Required to be Offered by an ETC.** The evidence confirms that upon designation as an ETC in Indiana, Telrite will provide all of the functionalities required of an ETC in 47 C.F.R. § 54.101(a) as follows:

*i. Voice-grade access to the public switched telephone network.* The FCC has concluded that voice grade service means the ability to make and receive phone calls within a specified bandwidth and frequency range. 47 U.S.C. § 54.101(a). We find that Applicant meets this requirement. No evidence was presented that Applicant’s customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Applicant satisfies this requirement.

*ii. Local usage.* ETCs must include local usage beyond providing simple access to the public switched telephone network as part of a universal service offering. An applicant for ETC designation must demonstrate that it offers a local usage plan that is “comparable” to the plan offered by the ILEC in the relevant service territory. 47 C.F.R. §

54.202(a)(4). In analyzing whether an ETC applicant's plan is comparable to the underlying ILECs, the FCC reviews all aspects of the plan on a case-by-case basis, including the nature of the supported service, the size of the local calling area, the inclusion of additional services (e.g., caller I.D.) and the amount of local usage. See 2005 FCC ETC Order, ¶ 33. As the record demonstrates, Telrite will offer users the ability to send and receive local phone calls wherever the Company offers service. Mr. Lisle noted that Telrite intends to offer Lifeline customers access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services and call forwarding. Based on the evidence, we find that Applicant's offering will be comparable to the underlying ILEC plans, and therefore satisfies this requirement.

iii. Dual-Tone, Multi-Frequency Signaling, or its Functional Equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. The Application indicated that Telrite currently uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling. Mr. Lisle testified that upon designation as an ETC in Indiana, Telrite will provide dual-tone multi-frequency signaling or its functional equivalent. The Commission noted in the Virgin Mobile ETC Order that the FCC permits CMRS carriers to provide signaling which is a functional equivalent to DTMF to satisfy this requirement.

iv. Single-Party Service or its Functional Equivalent. Single-party service affords a dedicated message path for the length of a user's particular transmission. Telrite meets this requirement with respect to each of its service offerings. Mr. Lisle stated that upon designation as an ETC in Indiana, Telrite will provide single-party service. Accordingly, the record reflects that Applicant satisfies this requirement.

v. Access to Emergency Services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. By virtue of its use of AT&T's network, Applicant, like Virgin Mobile, provides nationwide access to 911 emergency services for all of its customers. Telrite currently provides its wireline customers in Indiana with such access. Further, Telrite committed to continue to work with local PSAPs within its ETC service areas to make 911 and E-911 service available to its customers. Since Telrite has no history of providing wireless services in Indiana and given the importance of public safety, we find that Telrite, consistent with conditions met by TracFone and i-wireless, must seek certification from each PSAP where Telrite seeks to provide Lifeline service confirming that the carrier provides its subscribers with 911 and E-911 access prior to providing Lifeline services in Indiana. First, Telrite must request certification from each applicable PSAP and notify the PSAP that Telrite may self-certify compliance if the PSAP has neither provided certification nor made an affirmative finding that the carrier does not provide its customers with access to 911 and E-911 service within the PSAP's service area within 90 days of the request. The evaluation period is tolled whenever a PSAP reasonably requests information or equipment to evaluate the Telrite's requests until Telrite responds with that information or equipment. If the PSAP determines that Telrite will not offer its Lifeline customers appropriate access to emergency services or has concerns regarding Telrite's ability and if the PSAP notifies Telrite of its concerns during the evaluation period, the evaluation period is extended by an additional 90 days and the

carrier may not self-certify compliance until it has addressed the PSAP's concerns. Second, before self-certifying, Telrite must obtain from its underlying wireless carrier in that area certification that the underlying carrier routes emergency calls from Telrite's customers to the PSAP in the same manner that it routes emergency calls from its own customers. Third, Telrite must provide the PSAP with a copy of the relevant self-certifications at the time it is effective. Fourth, if a PSAP finds that Telrite does not provide its customers with 911 and E-911 access after Telrite has self-certified that it does, Telrite must notify the Commission of this finding upon receiving notice and must explain how it plans to meet the PSAP concerns and provide Lifeline customers with appropriate 911 and E-911 access.

vi. Access to Operator Services. Access to operator services has been defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Thus, by providing all of its customers access to operator services with respect to billing questions and call completion we find that Telrite meets this definition.

vii. Access to Directory Assistance. Access to directory assistance means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. Telrite has the capability to provide access to directory assistance by providing customers with the ability to dial 411.

viii. Access to Interexchange Service. Applicant offers access to interexchange service by providing all of its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Applicant's service with no additional charges because minutes for local or long distance services are not billed separately at different rates.

ix. Toll Limitation for Qualifying Low-Income Consumers. Toll limitation allows customers to either block the completion of outgoing long distance calls or specify a certain amount of toll usage to prevent them from incurring significant long distance charges and risking disconnection. Applicant provides its wireless service on a prepaid, or pay-as-you-go, basis. Moreover, Applicant's service is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Further, Telrite does not provide International service under the basic Lifeline Plan. The FCC has determined in ETC designations for Virgin Mobile that the nature of prepaid service mitigates concerns that low-income customers will incur significant charges for long distance calls, risking disconnection of their service. *Virgin Mobile USA, L.P. Application for Forbearance from 47 U.S.C. § 214(e)(1)(A); Applications for Limited Eligible Telecommunications Carrier Designation in New York, Pennsylvania, Virginia, North Carolina, and Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 at ¶ 34 (2009) ("Virgin Mobile Forbearance Order"). Since Telrite offers only prepaid cellular service, the limitation requirement is satisfied by virtue of the fact that service will automatically end when the prepaid bank of minutes runs out, regardless of whether prepaid minutes were used on local or long-distance calls. Accordingly, we find Applicant's service satisfies this requirement.

C. **Lifeline Service Offering Requirements.** Mr. Lisle provided evidence that Telrite will offer plans with 68 or 125 free minutes with rollover of unused minutes and 250 free minutes without rollover of unused minutes. He testified that each plan will include several functions and features. The evidence shows that Applicant agrees to comply with all applicable Lifeline requirements upon designation as an ETC.

D. **Functionality in Emergency Situations.** FCC regulations require that applicants for ETC designation demonstrate their ability to remain functional in emergency situations. 47 C.F.R. § 54.209(a)(2). Mr. Lisle explained that calls will begin on the underlying networks of other carriers. In its petition, Telrite states that its customers have the same ability to remain functional in emergency situations as currently provided by the carriers to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, rerouting of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. We recognized in the Virgin Mobile ETC Order that that applicant had a service arrangement with an underlying carrier, Sprint Nextel, which had established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. We noted that Sprint Nextel has reasonable amounts of back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. We are administratively aware that Telrite's wholesale provider in Indiana, AT&T, also has programs, policies, and facilities in place to properly respond to emergency situations. Mr. Lisle also testified that Telrite maintains its own diesel-powered backup generator at its switch facility in Georgia. Based on the foregoing, we find that Applicant satisfactorily meets the requirement to remain functional in emergency situations.

E. **Advertising Requirements.** Telrite demonstrated that it will broadly advertise the availability and rates for its Lifeline services using a variety of media in conformance with state and federal regulations. Such advertising may include, as it has in other states in which Telrite currently provides Lifeline services, advertisements on television and in newspapers, as well as via brochures, in-person events, posters, direct mail and the internet. Based on the foregoing, we find that the evidence of record indicates that the Applicant will comply with all applicable advertising requirements.

F. **Applicant's Designated ETC Service Areas.** The FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). Telrite is authorized to provide telecommunications service throughout the State of Indiana, but only intends to offer service in the areas where its underlying facilities-based wireless provider, AT&T, has coverage. Applicant provided a map of its coverage area and a lists of wire centers of its requested ETC service area indicating that it has the ability to serve these areas.

G. **Public Interest Considerations.** As noted above, the designation of Telrite as an ETC requires a public interest analysis. 2005 FCC ETC Order, ¶¶ 42 and 43. In the absence of statutory strictures for evaluating the public interest, the FCC has

recommended that ETC designations be analyzed “in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.” 2005 FCC ETC Order, ¶ 40.

*i. Use of Lifeline Funding.* The record indicates that Telrite will use funds from the federal Lifeline program to provide supported services to Lifeline customers. Telrite has met its burden of proof for the Lifeline program. We find that Telrite’s plans are consistent with current FCC regulations on the use of such funds.

*ii. Impact on the Universal Service Fund.* We have previously recognized that the FCC has undertaken various steps to address the explosive growth in high-cost universal support disbursements. *Perry-Spencer Communications, Inc.*, Cause No. 41052-ETC-53, 2008 Ind. PUC LEXIS 510, at \*33 (IURC July 24, 2008). Notably, however, Telrite is not seeking access to funding from the federal USF to provide service to high-cost areas. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, the Lifeline program ensures that universal service fund support only funds the carrier that serves the customer.

However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers. We are concerned that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes.

Therefore, we find as we did in the Virgin Mobile ETC Order that it is in the public interest to impose certain safeguards on Telrite. To ensure that Telrite’ Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on Telrite’ adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers; dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility among other conditions enumerated in this Order. Provided these requirements are satisfied, along with other conditions and safeguards promulgated in this Order and in FCC rules to deter waste fraud and abuse, we find that Telrite’s Lifeline only designation should not have an excessive impact on the universal service fund.

*iii. Consumer Protection.* One of the requirements established by the 2005 FCC ETC Order was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is complying with applicable service

quality standards and consumer protection rules. Mr. Lisle testified that Telrite is committed to strict compliance with the CTIA<sup>4</sup> Consumer Code for wireless services.

iv. *Creamskimming.* The FCC identified creamskimming as an appropriate factor to consider in “areas where an ETC applicant seeks designation below the study area level of a rural company.” See 47 CFR § 54.202(c). That type of analysis is unnecessary in this case since Telrite seeks ETC designation to serve entire rural ILEC areas in its application. See 2005 FCC ETC Order.

v. *Increased Customer Choice.* Currently in Indiana all incumbent local exchange carriers are required to provide the Lifeline discount to eligible customers. In light of Indiana’s low Lifeline take rate and the recent ETC relinquishments by other Indiana carriers, we agree with Mr. Keen’s testimony that this offering brings increased competitive choice to the Lifeline eligible customers in Indiana and that this offering may reach a particular segment of Lifeline eligible customers that have not yet been reached. Based on the record, we find that Applicant’s designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

vi. *Affordable Rates.* We must also consider whether designation as an ETC will “ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]” 2005 FCC ETC Order, ¶ 40. Applicant presented evidence that its Lifeline offerings include plans where eligible customers will receive 68, 125 or 250 free prepaid minutes per month at no charge. Each plan will include several functions and features. Telrite also offers a variety of additional service plans, including an unlimited number of minutes for \$29.45 per month. In addition, customers receive a handset free of charge. The OUCC did not dispute the affordability of Applicant’s rates. Accordingly, we find that the designation of Telrite as an ETC would serve the public interest by ensuring the availability of telecommunications services at just, reasonable and affordable rates. Therefore, Telrite should file tariffs consistent with the testimony filed herein prior to offering Lifeline services in Indiana.

vii. *Advantage & Disadvantages of the Offering.* The record reflects that Applicant’s Lifeline service offering is comparable to the Virgin Mobile and ILEC Lifeline plans. Accordingly, we find that Telrite has satisfied this criterion of our public interest inquiry.

viii. *Facilities-Ownership.* Telrite provides service through a combination of its own facilities and resale of wireless service from AT&T. In its 1997 Universal Service Report and Order, the FCC examined the requirement of 47 U.S.C. § 214(e)(1) that provides in pertinent part that “a common carrier designated as an ETC ... shall ... offer services ... using its own facilities or a combination of its own facilities and resale of another carrier’s services...”<sup>5</sup> In the context of a request for ETC designation for high cost

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<sup>4</sup> CTIA is the international association for the wireless telecommunications industry.

<sup>5</sup> *In the Matter of Federal State Joint Board on Universal Service Funding, Report and Order*, CC Docket 96-45, FCC 97-157, Rel. May 8, 1997.

universal service support, the FCC specifically examined the eligibility of a carrier that provides service through a combination of its own facilities and resale of another carrier's service and concluded that "a carrier need not offer universal service wholly over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale."<sup>6</sup>

The FCC also found that "the statute does not dictate that a carrier use a specific level of its own facilities in providing the services designated for universal service support given that the statute provides only that a carrier may use a combination of its own facilities and resale and does not qualify the term 'own facilities' with respect to the amount of facilities a carrier must use."<sup>7</sup> Accordingly, the FCC noted there is no requirement that the carrier provide services "predominantly" over its own facilities.<sup>8</sup> The FCC noted that "the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services."<sup>9</sup> The FCC observed that by including carriers relying on a combination of facilities and resale within the class of carriers eligible to receive universal service support, and by declining to specify the level of facilities required, the United States Congress sought to accommodate the various entry strategies of common carriers seeking to compete in high cost areas.<sup>10</sup> With regard to the location of the carrier's own facilities, the FCC found that the statute does not mandate that the facilities be physically located in the service area, and discouraged the creation of artificial incentives to deploy redundant facilities when those facilities are not otherwise economically justified.<sup>11</sup>

Telrite does not own any facilities in Indiana; however, Telrite states that it maintains facilities within the State of Georgia. Applicant further states these facilities are co-located with other carriers' facilities, and provide Telrite the ability to provide one or more of the supported services. Telrite's witness testified that it owns and operates a Class 4/5 switch and other facilities located in the State of Georgia and that the Telrite-owned facilities will be used to offer services in Indiana. Telrite submitted evidence under confidential seal on September 7, 2011, which included a network diagram and call flow.<sup>12</sup> Applicant's evidence indicates Telrite will offer Directory Assistance and Operator Services through use of its own facilities. Based upon the applicable federal rules in effect at the time Telrite submitted its application, we find that Telrite meets the standards for facilities established by the FCC in its May 8, 1997 *Universal Service Order*.<sup>13</sup>

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<sup>6</sup> *Id.* at ¶ 169 (footnote omitted).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 170.

<sup>9</sup> *Id.* at ¶ 169.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at ¶ 177.

<sup>12</sup> On August 25, 2011, Telrite filed a motion for confidential treatment of Telrite's Confidential Exhibit 3 to the Rebuttal Testimony of Brian Lisle that was filed with the Commission on August 24, 2011. The Commission granted Telrite's motion for confidential treatment on September 6, 2011.

<sup>13</sup> On November 18, 2011, the FCC issued an order concerning USF and Intercarrier Compensation (WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, effective December 29, 2011 ("*USF/ICC Order*"). In the USF/ICC Order, the FCC amended 47 C.F.R. § 54.101 to specify that the functionalities of eligible voice telephony services

ix. Deployment of, or Improvement to, Indiana Network Facilities.

The record reflects that although Telrite owns and operates certain infrastructure in the State of Georgia which it utilizes to provide service, it will also depend on the facilities of AT&T to provide service to wireless customers in Indiana. We noted in our Virgin Mobile ETC Order that Sprint Nextel is constantly upgrading and expanding its Indiana network and infrastructure, directly benefiting Indiana consumers. Based on the competitive forces at work in the wireless industry, we expect that AT&T takes similar steps to improve and expand its network facilities. Ultimately, we conclude that Telrite's patronage of AT&T will spur that company and others to maintain and improve their Indiana network facilities. As such, we are satisfied that Telrite's partial reliance on the AT&T network will contribute to a demand for Indiana network facilities and will bring benefits to Indiana's telecommunications infrastructure.

x. Commitment to Provide Service Upon Reasonable Request.

Pursuant to 47 C.F.R. § 54.202(a)(1)(i), an ETC applicant must commit to provide service upon reasonable request throughout its designated service area. We find, as we did in the Virgin Mobile ETC Order, that it is reasonable for Telrite through AT&T to accommodate requests for service as required by the 2005 FCC ETC Order. If the potential customer is within Telrite's designated service area and its network coverage area indicated in its Application, Telrite will provide service on a timely basis. If the potential customer is within the designated service area, but outside existing network coverage, Telrite through AT&T will provide service within a reasonable period of time if service can be provided at reasonable cost by:

- (a) Modifying or replacing the requesting customer's equipment;
- (b) Deploying a roof-mounted antenna or other equipment;
- (c) Adjusting the nearest cell tower;
- (d) Adjusting network or customer facilities;

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include: 1) voice grade access to the public switched network or its functional equivalent; 2) minutes of use for local service provided at no additional charge to end users; 3) toll limitation to qualifying low-income consumers; and 4) access to 911 and enhanced 911 emergency services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. In an Order on Reconsideration issued December 23, 2011 (FCC 11-189), the FCC clarified the intent of the rule revision: "Therefore, to be in compliance with our rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Order*, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported "voice telephony service," or obtain forbearance from the "own facilities" requirement from the Commission." On February 6, 2011, the FCC issued the Lifeline Link Up Reform and Modernization Order (WC 11-42, FCC 12-11), the FCC granted blanket forbearance from applying the Act's facilities requirement of section 214(e)(1)(A) to all telecommunications carrier that seek limited ETC designation to participate in the Lifeline program, subject to the conditions that the carrier comply with certain 911 requirements and the carrier must file, and Bureau must approve, a compliance plan providing specific information regarding the carrier's service offering and outlining the measures the carrier will take to implement the obligations contained in the Order as well as further safeguards against waste fraud and abuse. *See* ¶ 368. The record in this Commission proceeding closed before the FCC took this action, and therefore, we will not deny the Petition on this basis. However, based upon the FCC's orders and rule revisions, Telrite will need to obtain approval of a compliance plan from the FCC before offering the federal Lifeline program in Indiana.

- (e) Reselling services from another carrier's facilities to provide service; or
- (f) Employing, leasing or constructing an additional cell site, cell extender, repeater or other similar equipment.

*See Re Designation of Eligible Telecommunications Carriers*, Cause No. 41052 ETC 47 (IURC 3/17/2007) at 10-11. Accordingly, we find Applicant has demonstrated its willingness and ability to provide service throughout its requested service area.

*xi. Additional Public Interest Analysis.* ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute its fair share to public interest funds from which its network and its customers benefit. Telrite has testified to its willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Ind. Code ch. 8-1-6, the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8, and the IUSF pursuant to the Commission's Order in *Commission Investigation of Universal Service Reform*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004). Mr. Lisle indicated that due to the prepaid nature of its business, Telrite's Lifeline service plan includes all applicable taxes and fees. Based on the foregoing public interest analysis, we conclude that designating Telrite as an ETC will promote the public interest and further the goals of the Act.

**H. Applicant's Request for Link Up Reimbursement.** We note that 47 C.F.R. § 54.411 has been removed from the Code of Federal Regulations. *See 77 FR 12952, 12972*, Mar. 2, 2012. The FCC has eliminated Link Up support on non-Tribal Lands for all ETCs. *See Lifeline Link Up Reform and Modernization Order* (WC 11-42, FCC 12-11), released February 6, 2012. Indiana currently has no federally designated Tribal Lands. For all these reasons, we find Telrite's Application requesting ETC designation to receive Link Up support is moot, and is hereby denied.

**6. Regulatory Oversight.** This Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See e.g., Re Nextel*, Cause No 41052 ETC 43, 2004 Ind. PUC LEXIS 87, at \*84 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. 47 C.F.R. § 54.313. In order for this Commission to satisfy its ETC certification requirements to the FCC, this Commission requires ETC applicants to file a tariff with the Commission and track its USF expenditures. *See Commission Investigation of Universal Service Reform*, Cause No. 40785, 1997 Ind. PUC LEXIS 354 (IURC November 15, 1997). The record reflects Telrite's intention to comply with the Commission's Lifeline tariff filing requirement. Applicant must also comply with

USF tracking requirements this Commission previously established to ensure that funds received from USAC for Indiana are devoted to furthering universal service goals within Applicant's designated service area. Accordingly, we find that Applicant's terms and conditions of service should be incorporated into Applicant's Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Applicant making its universal service offering available to eligible consumers in Indiana.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Mr. Lisle testified that to sign-up for Lifeline service applicants request or complete an enrollment form by contacting a toll-free telephone number established by Telrite, online at [www.lifewireless.com](http://www.lifewireless.com). or at any of Telrite's approved retail locations. Applicants must provide all of the information on the enrollment form, including their name, residential address and relevant eligibility criteria. Upon completion of the enrollment form, the form is signed by each applicant either manually or via electronic signature. Prospective customers are informed that they can speak to a Telrite customer service representative if they have questions regarding the enrollment process, their certification or any aspect of Lifeline services. Mr. Lisle also testified that Telrite will abide by the applicable regulations of the FCC and the IURC regarding certification and verification of customer eligibility. In the absence of a clear plan detailing the type(s) of contractors Telrite may hire and how they will be trained and used to assure compliance with the Lifeline program, Telrite must deal directly with the customer or provide detailed information regarding its contractors in its compliance plan.

Further, in the course of the Commission's review of compliance filings, we may find that it is appropriate to initiate a review of Telrite's compliance with federal and state ETC obligations since Telrite has no previous history of providing wireless services in Indiana.

7. **Prospective ETC Reporting Requirements.** Finally, we find that Applicant should be required to meet the prospective reporting requirements established by the 2005 FCC ETC Order to the extent applicable given Applicant's limited designation as an ETC for Lifeline services only. To this end, Applicant shall submit the following information on an annual basis:

- (a) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities that it owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users served in a designated service area, or that potentially affects a 911 special facility (as defined in subsection (e) of Section 4.5 of the Outage Reporting Order. *See* In the Matter of New Part 4 in Commission's Rules Concerning Disruptions to Communications Services, ET Docket 04-35, Released August 14, 2004). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically,

the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected. To the extent that Applicant relies on the facilities of a carrier that is designated as an ETC in Indiana and is also subject to this reporting requirement, Applicant may join in the report filed by the underlying carrier for this or other reporting requirements provided that any such report clearly indicate the participating entities;

- (b) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (c) The number of complaints per 1,000 handsets or lines;
- (d) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;
- (e) Certification that the ETC is able to function in emergency situations;
- (f) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (g) Certification that the carrier acknowledges the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

2005 FCC ETC Order at ¶ 69 (footnotes omitted); 47 C.F.R. § 54.209.

Telrite's compliance filings should be filed under this Cause, due on August 15<sup>th</sup> of each year beginning in 2012, unless otherwise directed by the Commission.

**8. Conditions on Telrite's Designation as an ETC.** In accordance with the Commission's findings above, Telrite shall be subject to the following conditions:

- (a) Consistent with 47 C.F.R. § 54.407, Telrite shall not receive universal service support for a subscriber to lifeline service until the subscriber activates the service. Telrite shall deactivate a Lifeline account if the customer has no usage for sixty (60) consecutive days. Telrite will not report customers that have not utilized the service for sixty (60) consecutive days on FCC Form 497.

- (b) Telrite shall offer Lifeline eligible customers a minimum of 68 free minutes with rollover or 250 free minutes without rollover of unused minutes per month and, for additional minutes, charge per minute rates as provided in Mr. Lisle's testimony and accompanying exhibits. Prior to providing Lifeline service in Indiana, Telrite shall file a tariff of their proposed offering and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.
- (c) Telrite shall provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.
- (d) Telrite shall provide its Lifeline customers with E-911 compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain Lifeline supported services as of the date it provides Lifeline services in Indiana.
- (e) Telrite shall obtain a certification from each PSAP where it seeks to provide Lifeline service confirming that Telrite provides its customers with 911 and E-911 access or self-certifying that it does so if certain conditions are met, consistent with our findings in section 5. B. v.
- (f) Telrite shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. 54.401(a)(1) and 47 C.F.R. 54.405 and abide by the FCC's 2011 Duplicative Program Payments Order, which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.<sup>14</sup>
- (g) Telrite shall provide the Commission with a copy of its annual Lifeline Verification survey results that it files with USAC by August 31 of each year.
- (h) On a quarterly basis Telrite shall provide the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month. In these quarterly reports, Telrite shall also report the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 60 consecutive days, unsuccessful annual verification, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Telrite will continue to make such quarterly filings until otherwise instructed by the Commission.

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<sup>14</sup> *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, Report and Order, CC Docket No. 96-45, WC Docket Nos. 11-42, 03-109, 26 FCC Rcd 9022 at para. 9 (2011).

- (i) To safeguard against misuse of the Lifeline service plan, Telrite shall deal directly with the customer and require each customer to self-certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.
- (j) Pursuant to 47 C.F.R. § 54.410, Telrite shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer re-certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.
- (k) In the event the ILAP becomes law, Telrite shall seek Commission approval of its new Lifeline offering subject to the additional Indiana discount.
- (l) Telrite shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTRAC monthly surcharge (currently \$0.03) multiplied by the number of active Telrite accounts during each month, consistent with Cause No. 39880 and Ind. Code ch. 8-1-2.8.
- (m) Telrite shall pay applicable fees, such as the public utility fee, pursuant to Ind. Code ch. 8-1-6, the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8, the IUSF fee pursuant to the Commission's Final Order in Cause 42144, the wireless emergency enhanced 911 fee pursuant to Ind. Code § 36-8-16.5-30.5 and any other applicable fees.
- (n) Telrite shall submit a compliance plan indicating how it will implement the above conditions prior to offering Lifeline service in Indiana. The Commission shall have thirty (30) days to approve or seek additional modification of the compliance plan. In addition, Telrite shall submit a copy of its federal compliance plan to the Commission once it has been approved by the FCC.

We therefore find, based on the evidence presented, that Telrite has met all of the ETC eligibility requirements and that the public interest supports granting ETC status to Telrite for the limited purpose of participation in the Lifeline program. We find that making this prepaid service available to eligible customers will increase customer choice and will not adversely affect the USF. Telrite has demonstrated that it has the ability to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, Telrite's compliance with this Order and its eligibility for ETC designation. We further find that Telrite should be subject to the prospective reporting requirements and conditions set forth herein.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Telrite Corporation's application for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Applicant's evidence, shall be and hereby is granted.

2. Telrite Corporation's request for Link Up reimbursement shall be and hereby is denied.

3. Telrite Corporation's request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Applicant's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, LANDIS AND ZIEGNER CONCUR; BENNETT AND MAYS ABSENT:**

**APPROVED: APR 04 2012**

**I hereby certify that the above is a true and correct copy of the Order as approved.**



**Brenda A. Howe  
Secretary to the Commission**